IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

D.B.CIVIL SPECIAL APPEAL (WRIT) NO. 263/2007

For Approval and Signature :

HON'BLE THE CHIEF JUSTICE MR. J.M.PANCHAL

HON'BLE MR. JUSTICE BHANWAROO KHAN

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

Salauddin
Versus
The Motor Accident Claims Tribunal, Udaipur & ors.

Appearance :
Mr. S.P.Sharma , for the appellant
Mr. Mahesh Thanvi for the respondent no.6

CORAM :

HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL
HONOURABLE MR. JUSTICE BHANWAROO KHAN

Date : September 26, 2007

ORAL JUDGMENT

PER: HON'BLE THE CHIEF JUSTICE MR. J.M. PANCHAL

The instant appeal is directed against the order dated January 22, 2007 rendered by the learned Single Judge in S.B.Civil Writ Petition no. 5682/2005 by which the prayer made by the appellant to set aside the order dated August 24, 2005 passed by the Motor Accident Claims Tribunal, Udaipur in Misc. Case no. 13/2005

refusing to set aside the ex parte award dated July 5, 2003 rendered in claim case no. 732/1999, is refused.

The appellant is the registered owner of truck bearing registration no. GJ 09 T 7020. Deceased Shanti Lal was working as cleaner of the truck. On October 8, 1998 the truck was being driven by Sampat Lal , an employee of the appellant. The truck met with an accident in which the cleaner lost his life. Therefore, his heirs instituted MAC case no. 732/1999 before the Motor Accident Claims Tribunal, Udaipur and claimed compensation of Rs. 7,33,000/-. The appellant was impleaded as respondent no.2 in the said petition. Summons were sought to be served upon the respondent by registered post AD. The summons was properly addressed and duly sent by registered post AD but the acknowledgment receipt was not received by the court within 30 days from the date of issue of summons. Therefore, the Tribunal made necessary declaration as contemplated by proviso to sub-rule (5) of rule 9 of Order 5 of the Code of Civil Procedure, 1908 and proceeded to decide the matter. The Tribunal by an award dated July 5, 2003 awarded Rs. 2,11,820/- as compensation to the claimants, out of which a sum of Rs. 1,64,963 was required to be paid by the Insurance Company, whereas rest of the amount was required to be paid by the appellant and his driver.

The appellant moved misc. Case no. 13/2005 under Order 9 rule 13 of the Code of Civil Procedure, 1908 to set aside the ex parte award. The appellant could not rebut the statutory presumption contemplated by proviso to sub-rule (5) of rule 9 of Order 5. Under the circumstances, the Tribunal rejected the application submitted by

the appellant under Order 9 rule 13 of the Code of Civil Procedure vide order dated August 24, 2005. Thereupon, the appellant invoked the extra ordinary jurisdiction of this Court under Art. 226 of the Constitution by filing S.B.Civil Writ Petition no. 5682/2005. The learned Single Judge has dismissed the petition by order dated January 22, 2007 giving rise to the instant appeal.

This Court has heard the learned counsel for the appellant as well as the learned counsel for the Insurance Company and considered the documents forming part of the original petition. The plea that the addressee could not have approached the postal authorities requesting them to supply documents which would indicate that the summons sent by registered post were served upon the appellant and therefore, the application submitted under Order 9 rule 13 of the Code of Civil Procedure should have been allowed, cannot be accepted. Except making a bald statement on oath that he had not received the summons, the appellant did not produce any evidence to rebut the statutory presumption contemplated by proviso to sub-rule (5) of rule 9 of Order 5 of the Code of Civil Procedure. The appellant could have requested the Tribunal to summon necessary record from the post-office to establish his case that he was not served with the summons by registered post. However, it is an admitted position that no such attempt was made by the appellant at all. On the facts and in the circumstances of the case, this Court is of the opinion that except bald statement of the appellant that he had not received the summons, he could not rebut the statutory presumption referred to above. Therefore, the Tribunal was justified in rejecting

the application submitted by the appellant under Order 9 rule 13 of the Code of Civil Procedure. As the view taken by the Tribunal was in accordance with law the learned Single Judge was also justified in dismissing the writ petition which was filed by the appellant. The learned counsel for the appellant has failed to persuade this Court to take a view different than the one which is taken by the learned Single Judge and therefore, the appeal which lacks merit deserves dismissal.

For the foregoing reasons the appeal fails and is dismissed.

(BHANWAROO KHAN), J. **(J.M.PANCHAL), C.J.**

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